IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

COMPANY PETITION NO.65 OF 2005

Via World Wide .. Petitioner

v/s.

Nimbus Communications Ltd. .. Respondent

Mr.Shyam Diwan i/by M/s.India Law Services for the petitioner.

Mr.Anil Menon for the respondent.

CORAM : A.M.KHANWILKAR, J.

DATED : 25th August, 2005

P.C.

Heard learned counsel for the parties. Perused the pleadings.

2. In my opinion, the contentions raised by the rival parties are triable issues and cannot be the basis to proceed under section 433 read with section 434 of Companies Act. There is dispute about the issuance of invoice No.4001 dated 6th July, 2001 by the petitioner purportedly forwarded to the respondent-company by fax. The original of this document has not been produced by the petitioner on the assertion that no such communication has been sent by the petitioner. This will be a matter for trial and it will be gone into in the appropriate proceeding between the parties being summary suit No.1061 of 2005 pending in this court. The argument that amount of US$ 25,000 by way of settlement was remitted by the

respondent-company through Global Trust Bank to the account of the petitioner through their bankers-Bank of America was in relation to the invoice No.26.01 dated 8th March, 2001 is dependent on the acceptance of stand taken on behalf of the respondent-company that the said payment was remitted in the context of understanding arrived at between the parties as reflected from invoice No.4001 dated 6th July, 2001. There is force in the submission canvassed on behalf of the respondent-company that the petitioner will have to prove the documents exchanged on e-mail, in view of the stand taken by the respective parties. These aspects, as mentioned earlier, are triable issues.

3. Besides, the respondent-company on affidavit has stated that respondent-company is solvent and has a net worth of approximately Rs.67 crores. Besides, its annual turnover for the period ended 31st March, 2005 is approximately Rs.60 crores and that the company has been meeting its statutory obligations well within time and has not defaulted in either the payment of principal nor interest. This statement of the respondent-company made on oath has not been controverted by the petitioner at all. Even if the claim of the petitioner is to be accepted as it is, that will not exceed sum of INR Rs.25 lacs which can be taken care of by the respondent-company if such directions were to be issued by the appropriate court.

4. Taking overall view of the matter, in my view, this is not a fit case for proceeding against the respondent-company for directing the winding up the respondent-company. Hence dismissed.

(A.M.KHANWILKAR, J.)